



Employment-related tenancies

*In this article **Tammy Wong** explores employment offered accommodation, most often used as part of employment packages for staff located in remote locations. It also explores avenues to ensure all parties are protected in line with legislative requirements, and focusses on common pitfalls and traps.*

Many of our clients offer accommodation to employees as a condition of their employment with the company. This is most commonly the case in remote communities where housing is scarce and employees are required to relocate to the remote community in order to carry out their duties.

There are generally three types of employment related tenancies:

- Fixed term tenancies where the employee is contracted to work for a specific term (say, 2 years) and the employee's accommodation is expressed to be for the length of that specific term
- Periodic tenancies where the employee's accommodation is expressed to continue as long as the employment continues
- Periodic tenancies where the employee's fixed term contract has expired but the employee continues to be employed by the company and occupy the same premises

Some companies will choose to subsidise rent and other utilities in connection with their employment-related properties, such as:

- Electricity or gas
- Water
- Internet connection
- Phone connection

Some companies will allow the employee's spouse or partner to reside in the accommodation with the employee even if that spouse or partner is not employed by the same company or is employed by another company in the region.

Even if an employee does not pay any rent or utilities, all employment related tenancies are subject to the *Residential Tenancies Act* (NT) (**Act**).

This means that the provisions of the Act apply in addition to any rental agreement between the parties to regulate the relationship between the employer-landlord and the employee-tenant.

This includes but is not limited to (all references are to sections of the Act):

Landlord's responsibilities	Tenant's obligations
Premises to be habitable and safe (s47)	Not to maintain premises in an unreasonably dirty condition (s51)
Premises to be clean and suitable for habitation (s48)	Notify landlord of any damage or potential damage (s51) and if repairs required (s58)
Premises to be secure (s49)	Not to damage the premises (s51)
Obligation to repair (s57)	Not to alter or remove locks (s52, s53)
Premises to be vacant at the commencement of tenancy (s64)	Not to use the premises for an illegal purpose or cause or permit nuisance (s54)
Landlord to allow tenant reasonable use and enjoyment of premises (s65, s66)	Pay rent (s35) and bond (s29) as applicable



Termination of employment related tenancies

The Act prescribes strict notice periods for ordinary landlords wishing to vacate their properties. Generally, landlord may not terminate a fixed term tenancy prior to the expiry date and, even then, must give 14 days' notice to the tenant. Generally, a landlord may not terminate a periodic tenancy unless it gives 42 days' notice to the tenant.

These notice periods are not applicable to employment related tenancies.

An employer may terminate an employment related tenancy where:

1. The tenant has entered into a tenancy agreement as a condition or benefit associated with employment; and
2. The employer has terminated or purported to terminate the employment of the tenant; and
3. The employer has notified the tenant of the termination of the tenant's employment.¹

If each of the above elements are satisfied, then the employer-landlord may terminate the employment related tenancy by giving the employee-tenant a notice of termination that specifies:

1. The address of the premises subject to the tenancy
2. The date on which the tenant is required to give up vacant possession of the premises to the landlord
3. Whether the tenancy is terminated because of a breach of an employment agreement or any other ground of termination².

The notice of termination must be signed by the employer-landlord³.

If the employment related tenancy is being terminated because the employee breached his or her employment agreement, then the employer must give a minimum of 2 days' notice for the employee-tenant to vacate the premises.⁴

If the employment related tenancy is being terminated for any other reason, then the employer must give a minimum of 14 days' notice or, if applicable, the period of notice that is specified in the employee's employment agreement.⁵

Notices purporting to terminate employment related tenancies must comply with the above conditions. Otherwise, they will have no effect.

Common Pitfalls

It is commonly the case that:

- employment contracts will generally describe the employer's obligation to provide accommodation for the employee without further specification as to the location of the premises or the responsibilities of either party
- employers do not execute separate tenancy agreements and/or occupancy agreements with their employees
- employers do not complete condition reports prior to and after each tenancy

¹ Section 91, *Residential Tenancies Act* (NT) ("Act").

² Section 101(1)(a) – (d), *Act*.

³ Section 101(1), *Act*.

⁴ Section 91(2)(a), *Act*.

⁵ Section 91(2)(b), *Act*.



- employers will terminate an employee's employment without first having considered the practical consequences of how to vacate the employment related tenancy
- employers will attempt to vacate the employment related tenancy without the proper notice

As a result of the above, the following disputes arise during the tenancy and upon termination:

- employees will dispute the amount of rent and utilities they are obliged to pay to the employer
- the employer may experience difficulty vacating the premises because the employee's spouse asserts that he or she has a de facto right to reside in the premises
- employees will challenge the validity of the employer's request for them to vacate the premises

Solutions

In order to avoid the risks associated with employment related tenancies, the employer should:

1. ensure that the employment agreement states that an employment related tenancy is a condition or benefit associated with employment
2. enter into written tenancy agreements with their employees that specify:
 - a. the location of the premises
 - b. each person residing in the premises who is an employee of the company as a party to the agreement (ie, if it is a husband and wife team, both husband and wife should be named)
 - c. the persons who are permitted to be additional occupants of the premises
 - d. that employees are not permitted to allow persons other than the named additional occupants to reside long term (to be defined by the employer – say, more than 10 consecutive days) in the premises without prior written approval of the employer
 - e. exactly how much rent is due
 - f. exactly how and to what extent the employer will subsidise the utilities and whether, after a certain point, the employee shall be required to contribute his or her own funds
3. seek any approved additional occupant's written acknowledgement of their status as an occupant only within the premises (and not a tenant) and their agreement to vacate when the employment related tenancy is terminated
4. complete condition reports prior to and after each tenancy
5. formally renew fixed term tenancies or otherwise formally note when an employee's fixed term tenancy has lapsed into a periodic tenancy
6. formally note that the benefit of the tenancy continues to be associated with the employee's employment in cases where an employee changes his or her position within the company but nevertheless continues to reside at the same premises
7. otherwise observe the conditions of the Act.

* Note this advice is general in nature and further advice should be sought in specific circumstances.

For advice on employment matters, please contact Bowden McCormack on 08 8941 6355 or email the writer at tammy@bowden-mccormack.com.au